



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/171360

PRELIMINARY RECITALS

Pursuant to a petition filed January 13, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services ["MiLES"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin on February 16, 2016.

The issue for determination is whether petitioner's Wisconsin State income tax refund may be intercepted and applied against the following 2 FS overpayment Claims:

- (I) Claim # [REDACTED]; November 1, 2012 to January 31, 2013; outstanding balance of \$402.00 (original amount of \$1,138.00); and,
- (II) Claim # [REDACTED]; February 1, 2013 to January 31, 2014; \$5,608.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED] [REDACTED], HSPC
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 21 years old) is a resident of Milwaukee County, Wisconsin.
2. The Wisconsin Department of Health Services ["DHS"] seeks to intercept petitioner's Wisconsin state income tax refund and apply it against the following 2 FS overpayment Claims:
 - (I) Claim # [REDACTED]; November 1, 2012 to January 31, 2013; outstanding balance of \$402.00 (original amount of \$1,138.00); and,
 - (II) Claim # [REDACTED]; February 1, 2013 to January 31, 2014; \$5,608.00.
3. Petitioner was an adult member of the FS household during the time period of the overpayments identified in *Finding of Fact #2*, above.
4. The overpayments identified in *Finding of Fact #2*, above, were caused because there was an adult male member of the household who was not reported to MiLES and he had income.
5. A written FS overpayment letter notice entitled *Notification of FS Overissuance* and dated July 8, 2013 was sent to petitioner concerning the following FS overpayment: Claim # [REDACTED]; November 1, 2012 to January 31, 2013; outstanding balance of \$402.00 (original amount of \$1,138.00); petitioner never received that letter notice because it was sent to an address where she was no longer living.
6. A written FS overpayment letter notice entitled *FoodShare Overpayment Notice* and dated March 12, 2015 was sent to petitioner concerning the following FS overpayment: Claim # [REDACTED]; February 1, 2013 to January 31, 2014; \$5,608.00; petitioner never received that letter notice because it was sent to an address where she was no longer living.
7. No written letter notice was sent to petitioner informing her that her Wisconsin State Tax Refund may be intercepted to repay the following FS overpayment: Claim # [REDACTED]; November 1, 2012 to January 31, 2013; outstanding balance of \$402.00 (original amount of \$1,138.00).
8. The State of Wisconsin mailed a written letter notice, entitled *Important Notice About Your State Tax Refund And Credits* and dated December 11, 2016, to petitioner and petitioner received that letter notice; that December 11, 2016 letter notice stated that petitioner's Wisconsin State Tax Refund may be intercepted to repay the following FS overpayment: Claim # [REDACTED]; February 1, 2013 to January 31, 2014; \$5,608.00.

DISCUSSION

The state shall, at least annually, certify to the Wisconsin Department of Revenue amounts that it has determined it may recover resulting from an overpayment of Food Stamps ["FS"], an overpayment of Medical Assistance ["MA"], an overpayment of Wisconsin Works ["W-2"], an overpayment of Child Care ["CC"], and an overpayment of Aid to Families with Dependent Children ["AFDC"]. Wis. Stat. § 49.85(2) (2013-14).

The state must notify the person of several things, including that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and that the person may appeal the decision by requesting a Hearing. Wis. Stat. § 49.85(3) (2013-14).

(I) FS OVERPAYMENT CLAIM # [REDACTED]

The State of Wisconsin is required, at least 30 days before certification is made to the Wisconsin Department of Revenue ["WDR"] for a tax intercept, to send a written letter notice informing the person, among other things, that their Wisconsin State Tax Refund may be intercepted to repay a debt. Wis. Stat. § 49.85(3)(a) (2013-14). This was not done in the case of the following FS overpayment: Claim # [REDACTED]; November 1, 2012 to January 31, 2013; outstanding balance of \$402.00 (original amount of \$1,138.00). Therefore, no tax intercept may be made with respect to that overpayment. A tax intercept may be made at a later date after proper and adequate notice has been issued.

(II) FS OVERPAYMENT CLAIM # [REDACTED]

The Hearing right is described as follows:

"If a person has requested a hearing under this subsection, the [state] shall hold a contested case hearing under s. 227.44, except that the [state] may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing."

Wis. Stat. § 49.85(4) (2013-14).

In this case petitioner never received the March 12, 2015 *FoodShare Overpayment Notice* concerning Claim # [REDACTED] because it was sent to an address where she was no longer living.

Petitioner's testimony in this regard is credible. Therefore, petitioner never had a prior opportunity for a Hearing. It follows that the scope of the Hearing in this matter is not limited.

Petitioner does not dispute the existence of the overpayment. She does not dispute that the adult male lived in the FS household of which she was a part and had income. However, she testified that she did not know that the adult male's presence in the household (and his income) had not been reported because it was not her case and she was not the casehead.

Petitioner's testimony may be correct. Nevertheless, that the law provides that each person who was an adult member of the FS Household when the overpayment occurred is responsible for paying the claim. 7 C.F.R. § 273.18(a)(4)(i) (2015); *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.2. Further, liability for an FS overpayment is not split evenly among liable parties. Every liable individual is responsible for 100% of the overpayment until the full debt is repaid in full. FWH 7.3.1.2. Finally, a person can be held liable for an FS overpayment and made to repay it even though the overpayment was not their fault. All FS overpayments, regardless of fault, must be collected. 7 C.F.R. § 273.18(b) (2015); See also, *FoodShare Wisconsin Handbook* ["FWH"] 7.3.1.1 & 7.3.2.1. Therefore, the tax intercept of petitioner's Wisconsin state income tax refund for the purpose of repaying the FS overpayment Claim # [REDACTED] must be upheld.

CONCLUSIONS OF LAW

For the reasons detailed above:

(I) Petitioner's Wisconsin State income tax refund may not be intercepted for the purpose of repaying FS overpayment Claim # [REDACTED] until after proper and adequate notice has been issued; and,

(II) Petitioner's Wisconsin State income tax refund may be intercepted in the total amount of \$5,608.00 and that amount may be applied against FS overpayment Claim # [REDACTED].

NOW, THEREFORE, it is

ORDERED

(I) that this matter be REMANDED to the DHS and MiLES and that petitioner's Wisconsin State income tax refund not be intercepted for purposes of applying it against the following FS overpayment Claim: Claim # [REDACTED]; November 1, 2012 to January 31, 2013; outstanding balance of \$402.00 (original amount of \$1,138.00); and,

(II) in all other respect the petition for review herein be and the same is hereby DISMISSED; DHS may certify the amount of \$5,608.00 to the Department of Revenue, pursuant to Wis. Stat. § 49.85 (2013-14), for purpose of a tax intercept of petitioner to repay the following FS overpayment Claim: Claim # [REDACTED]; February 1, 2013 to January 31, 2014; \$5,608.00.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

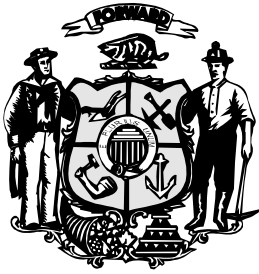
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of
Madison, Wisconsin, this 8th day of March,
2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 8, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit